

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ANTONIO LEE MIXON,

Plaintiff,

APPLE INCORPORATED,
TIDAL WAVE COMPANY,

Defendants.

Case No. 3:17-cv-00047-MMD-WGC

**ORDER ACCEPTING AND ADOPTING
REPORT AND RECOMMENDATION
OF MAGISTRATE JUDGE
WILLIAM G. COBB**

Before the Court is the Report and Recommendation of United States Magistrate Judge William G. Cobb (ECF No. 3) ("R&R") relating to Plaintiff's application to proceed *in forma pauperis* ("IFP Application") (ECF No. 1) and *pro se* complaint (ECF No. 1-1). Plaintiff filed his objection on February 8, 2017 ("Objection"). (ECF No. 4.)

This Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). Where a party timely objects to a magistrate judge’s report and recommendation, then the court is required to “make a *de novo* determination of those portions of the [report and recommendation] to which objection is made.” 28 U.S.C. § 636(b)(1). Where a party fails to object, however, the court is not required to conduct “any review at all . . . of any issue that is not the subject of an objection.” *Thomas v. Arn*, 474 U.S. 140, 149 (1985). Indeed, the Ninth Circuit has recognized that a district court is not required to review a magistrate judge’s report and recommendation where no objections have been filed. See *United States v. Reyna-Tapia*, 328 F.3d 1114 (9th Cir. 2003) (disregarding the standard of review employed by the district court when reviewing a report and recommendation to

1 which no objections were made); see also *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219,
2 1226 (D. Ariz. 2003) (reading the Ninth Circuit's decision in *Reyna-Tapia* as adopting the
3 view that district courts are not required to review "any issue that is not the subject of an
4 objection."). Thus, if there is no objection to a magistrate judge's recommendation, then
5 the court may accept the recommendation without review. See, e.g., *Johnstone*, 263 F.
6 Supp. 2d at 1226 (accepting, without review, a magistrate judge's recommendation to
7 which no objection was filed).

8 The Magistrate Judge recommends granting Plaintiff's IFP Application. Plaintiff
9 does not object to the granting of his IFP Application, but does object to being required
10 to pay an initial partial filing fee of \$12.77 fee and, thereafter, whenever his prison
11 account exceeds \$10, that he be required to make monthly payments in the amount of
12 20 percent of the preceding month's income credited to his account until the filing fee is
13 paid. Plaintiff contends that when *in forma pauperis* status is granted, he should not
14 have to pay and that he did not have to pay in two other cases filed in this Court. (ECF
15 No. 4 at 4.) However, a prisoner who has been granted *in forma pauperis* status is still
16 required to pay the full amount of the filing fee. 28 U.S.C. § 1915(a)(2). Moreover, the
17 Court is required to "assess and, when funds exist, collect, as a partial payment of any
18 court fees required by law, an initial partial filing fee" of a certain amount. *Id.* The
19 Magistrate Judge recommends such partial payment based on Plaintiff's certified
20 financial statement. The Court agrees with the Magistrate Judge's recommendation.

21 The Magistrate Judge recommends dismissing the complaint with prejudice
22 because it is "fanciful," and "even taking these far-fetched allegations as true, Plaintiff
23 admits he does not hold a patent, trademark or copyright for the prototype(s) and
24 therefore has no legal recourse." (ECF No. 3 at 5.) Plaintiff essentially argues that his
25 complaint should be allowed to proceed because evidence of infringement is clear on
26 the face of the complaint and because his complaint should be viewed under the less
27 stringent pleading standard governing pro se complaints. (ECF No. 4 at 2-3, 6-7.)
28 However, the Court agrees with the Magistrate Judge that Plaintiff's allegations are

1 "fanciful" and his claims frivolous. Accordingly, the Court adopts the Magistrate Judge's
2 recommendation.

3 It is therefore ordered, adjudged and decreed that the Report and
4 Recommendation of Magistrate Judge William G. Cobb (ECF No. 3) be accepted and
5 adopted in its entirety.

6 It is ordered that plaintiff's application to proceed *in forma pauperis* (ECF No. 1)
7 without having to prepay the full filing fee is granted. Plaintiff wil be required to pay an
8 initial partial filing fee in the amount of \$12.77. Thereafter, whenever Plaintiff's prison
9 account exceeds \$10, Plaintiff will be required to make monthly payments in the amount
10 of 20 percent of the preceding month's income credited to his account until the full filing
11 fee is paid.

12 It is further ordered that the Clerk detach and file the complaint (ECF No. 1-1).

13 It is further ordered that the complaint (ECF No. 1-1) is dismissed with prejudice.

14 The Clerk is instructed to close this case.

15 DATED THIS 27th day of April 2017.



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17 MIRANDA M. DU
18 UNITED STATES DISTRICT JUDGE
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